

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

MOHAMMAD HOSSAIN, M.D.)
627 Brookside Avenue)
Redlands, California 92373)

No. D 5019
OAH No. L 59324

PHYSICIAN'S AND SURGEON'S)
CERTIFICATE NO. A 34101)

DECISION

Respondent.)
_____)

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on October
18, 1993.

IT IS SO ORDERED this 15 day of September,
1993.

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Theresa J. Chassen

lf

This Decision was stayed by the Superior Court until 12-27-93. The new effective date of this Decision is 12-27-93.

BEFORE THE
DIVISION OF MEDICAL QUALITY
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

| | | |
|---------------------------------|---|-------------------|
| In the Matter of the Accusation |) | Agency No. D-5019 |
| Against: |) | |
| |) | OAH No. L-59324 |
| MOHAMMAD HOSSAIN, M.D. |) | |
| 627 Brookside Avenue |) | |
| Redlands, California |) | |
| |) | |
| Physician and Surgeon's |) | |
| Certificate No. A34101 |) | |
| |) | |
| Respondent. |) | |

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in San Bernardino, California, on April 29, 1993. The complainant was represented by Leslie Fleming, Deputy Attorney General. The respondent appeared personally and was represented by Evan L. Ginsburg, attorney at law.

Oral and documentary evidence was received and the matter submitted. The Administrative Law Judge finds the following facts:

I

Kenneth J. Wagstaff made the accusation solely in his official capacity as Executive Director of the Medical Board of California (hereinafter "Board").

II

On July 9, 1979, the Board issued physician and surgeon's certificate number A34101 to Mohammad Moazzam Hossain, M.D. (hereinafter "respondent"). Said certificate has been in full force and effect at all relevant times.

III

On September 16, 1991, patient Laura C. had an appointment with respondent for him to give her an employment physical examination.

She had previously consulted respondent for two medical conditions. The last time the patient saw respondent, prior to the incident in question, was a follow up visit for bronchitis.

IV

When she arrived for her appointment, Laura C. was put in an examining room to wait for the doctor. The doctor entered the room alone. He told the patient to remove her blouse and bra and waited while she complied with his directive.

V

Once the patient was disrobed and was standing in front of respondent, respondent began to touch and fondle her breasts. This was not a normal breast examination. In fact, the respondent knew that no breast examination was needed because the patient informed respondent that she had recently had one. The patient was very upset about the doctor's behavior toward her.

While respondent was intimately touching the patient, he was quizzing her about her sexual conduct.

VI

When respondent stopped touching the patient's breasts, he inserted his hand down her back to her buttocks, underneath her clothes; then he inserted his other hand down the front of her pants, underneath her clothes in her pelvic area.

The patient grabbed the respondent's front hand and pulled it out of her pants while at the same time stepping away from him, and respondent released her.

By this time the patient was in tears. She put her clothes back on while the respondent watched. Respondent then invited the patient out for pizza; she declined the invitation.

VII

Given the nature of the assault Laura C. had just endured, it is not at all surprising that she reacted angrily when she was charged more for the "examination" than she had been told it would cost.

The anger Laura C. expressed arose from respondent's conduct toward her. She did not make up the events as revenge for his overcharging her.

VIII

As in most sexual assaults, this case turns on the credibility of the witnesses. In this case, Laura C. was by far the more credible witness.

Her distress after the encounter with respondent is entirely consistent with her account of what happened to her at respondent's hands. She promptly reported the assault to the police. Her testimony about what happened on September 16th has been consistent and lucid. Moreover, she has absolutely no reason to lie about what happened.

X

The evidence of the nurse concerning her being in the room at the time of the examination of Laura C. is not credible for a number of reasons. First, she is a close associate of respondent's and thereby inclined to support his version of the events.

Second, neither Laura C. nor respondent mentioned her presence in the room in either of their original statements. Had the nurse been in the room for the examination, respondent certainly would have mentioned it earlier.

Finally, the nurse's sworn statement, given nearly fifteen months after the day in question, establishes that she is testifying to her custom and habit rather than about specific events which she independently recalls. She begins with a general statement of her duties:

" . . . one of my duties is to ask a patient to disrobe and put on a hospital gown if necessary, and when they are ready, call the doctor to the room. If the exam is to be of a personal nature, I then remain in the room to observe and for the comfort of the patient and to assist the examination with the doctor.

She then makes the critical assumption:

"I was working on September 16, 1991, and therefore, I was in the room during the exam on Ms. C-----.

Finally she admits:

"I do not have a specific memory of the examination of Ms. C-----"

IX

Respondent's testimony is suspect because he is the only one with a credible motive to lie about the events of September 16, 1991. In fact, because of his rather prominent position in the medical community, it is imperative to him that he not be held accountable for his assault on Laura C.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause exists to impose discipline against respondent's license under Business and Professions Code sections 2234 and 726, for unprofessional conduct by committing acts of sexual abuse and misconduct against a patient in the course of his practice.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The physician and surgeon's certificate number A-34101, previously issued to Mohammad Hossain, M.D., is revoked; however, the revocation is stayed, and respondent is placed on probation for seven (7) years on the following terms and conditions:

1. Respondent shall be suspended from the practice of medicine for ninety (90) days from the effective date of this Decision.

2. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

3. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division of Medical Quality (hereinafter "Division"), stating whether there has been compliance with all the conditions of probation.

4. Respondent shall comply with the Division's probation surveillance program.

5. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

6. The period of probation shall be stayed during any time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

7. Within 30 days of the effective date of this Decision, and on a periodic basis thereafter as may reasonably be required by the Division or its designee, respondent shall undergo a psychiatric evaluation and psychological testing, if deemed necessary, by a Division-appointed psychiatrist who shall furnish a psychiatric report to the Division or its designee.

If respondent is required by the Division or its designee to undergo psychiatric treatment, respondent shall, within 30 days of the requirement notice, submit to the Division, for its prior approval, the name and qualifications of a psychiatrist of respondent's choice. Upon approval of the treating psychiatrist by the Division, respondent shall undergo and continue psychiatric treatment until further notice from the Division. Respondent shall have the treating psychiatrist submit quarterly status reports to the Division. The cost of the evaluation and treatment shall be borne by respondent.

8. Within 60 days of the effective date of this Decision, respondent shall submit to the Division for its prior approval a course in ethics, which respondent shall successfully complete during the first year of probation.

9. During probation, respondent shall have a third party present while examining or treating any female patients.

II

If respondent violates the conditions of probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during the probationary period, the Division shall have continuing jurisdiction in the instant discipline until the new matter is finally resolved, and the period of probation shall be extended until the matter is final.

III

Upon successful completion of probation, the stay of revocation shall become permanent, and respondent's certificate will be fully restored.

Dated:

July 21, 1993

Carolyn D. Magnuson

CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

DANIEL E. LUNGREN, Attorney General
of the State of California
LESLIE B. FLEMING,
Deputy Attorney General, State Bar No. 68892
Department of Justice
110 West A Street, Suite 700
Post Office Box 85266
San Diego, California 92186-5266
Telephone: (619) 238-3665

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

| | | |
|---------------------------------|---|-------------------|
| In the Matter of the Accusation |) | NO. D-5019 |
| Against: |) | |
| |) | |
| MOHAMMAD MOAZZAM HOSSAIN, M.D. |) | <u>ACCUSATION</u> |
| DOB: [REDACTED] |) | |
| 627 Brookside Avenue |) | |
| Redlands, CA 92373 |) | |
| |) | |
| Physician and Surgeon's |) | |
| Certificate No. A34101 |) | |
| Respondent. |) | |

COMES NOW Complainant Kenneth Wagstaff, who as cause
for disciplinary action, alleges:

1. Complainant is the Executive Director of the
California State Medical Board of California ("Board") and makes
and files this accusation solely in his official capacity.

2. License Status. On or about July 9, 1979,
Physician and Surgeon's Certificate No. A34101 was issued by the
Board to Mohammad Moazzam Hossain, M.D. ("respondent"), and at
all times relevant herein, said Physician and Surgeon's
Certificate was, and currently is, in full force and effect.

1 Respondent also supervises a physician assistant under
2 license No. SA 14055. At all times relevant herein, said
3 physician assistant supervisor's license was, and currently is,
4 in full force and effect.

5 3. Jurisdiction. Section 2220 of California's
6 Business and Professions Code [hereinafter, "the Code"] provides,
7 in pertinent part, that the Division of Medical Quality may take
8 action against all persons guilty of violating any of the
9 provisions of the Medical Practice Act, i.e., Chapter 5 of
10 Division 2 of the Code. Section 2227 of the Code provides that a
11 licensee whose matter has been heard by the Division of Medical
12 Quality, by a medical quality review committee or a panel of such
13 committee, or by an administrative law judge, or whose default
14 has been entered, and who is found guilty may: (a) have his or
15 her certificate revoked upon order of the division; (b) may have
16 his or her right to practice suspended for a period not to exceed
17 one year upon order of the division or a committee or panel
18 thereof; (c) may be placed on probation upon order of the
19 division or a committee or panel thereof; (d) may be publicly
20 reprimanded by the division or a committee or panel thereof;
21 and/or (e) may have such other action taken in relation to
22 discipline as the division, a committee or panel thereof, or an
23 administrative law judge may deem proper.

24 4. Summary of Allegations. This Accusation is
25 brought, and Respondent is subject to disciplinary action,
26 pursuant to the following sections of the Medical Practice Act:

27 ///

1 Section 2234 [Unprofessional Conduct] and 726 [Sexual Misconduct
2 With A Patient].

3 ALLEGATIONS

4 5. Factual Predicate.

5 A. On September 16, 1991, patient Laura C. saw
6 respondent for an employment physical examination. Respondent
7 asked Laura to remove her blouse and bra. Laura did so, while
8 respondent remained present with her in the examining room.

9 B. While Laura was standing, respondent began touching
10 her breast. Laura told him she had just had a breast exam and a
11 pap smear. Respondent told her that he had to check for
12 infections, and kept feeling her breast. He asked Laura if she
13 was on the pill, if she had a boyfriend, and whether she had VD
14 (venereal disease). Respondent continued fondling her breast for
15 a few minutes, causing Laura much distress.

16 C. Respondent then reached behind Laura, pulled down
17 on the elastic waistband of her pants with one hand, and reached
18 into the front of her pants, under her panties, with his other
19 hand. Laura quickly grabbed respondent's hand and pulled it away
20 from her. Respondent told her she was overweight and that she
21 owed him \$60.00 for the physical examination.

22 D. Laura put her clothes back on. Respondent then
23 asked her if she wanted to go out for some pizza. She declined,
24 paid the bill, and left his office.

25 Sexual Misconduct

26 6. Section 2234 of the Code provides that the Division
27 of Medical Quality shall take action against any licensee who is

1 guilty of unprofessional conduct. Section 726 of the Code
2 essentially provides that the commission of any act of sexual
3 abuse or misconduct with a patient in the course of one's
4 practice constitutes unprofessional conduct and grounds for
5 disciplinary action.

6 7. Respondent is subject to disciplinary action
7 pursuant to sections 2234 and 726 because the matters set forth
8 hereinabove at paragraph 5 indicate he has demonstrated
9 unprofessional conduct by committing acts of sexual abuse and
10 misconduct against a patient in the course of his practice.

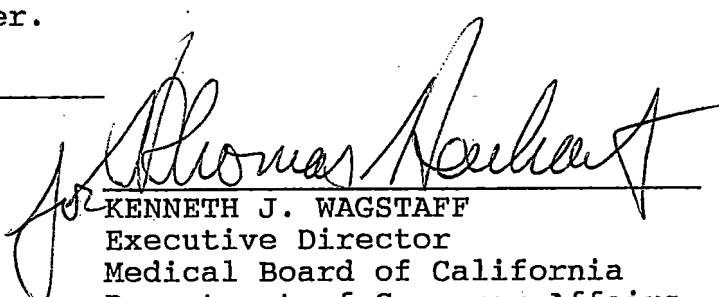
11 WHEREFORE, Complainant requests that a hearing be held
12 on the matters alleged herein, and that following said hearing,
13 the Board issue a decision:

14 1. ~~Revoking or suspending Physician and Surgeon's~~
15 ~~Certificate No. No. A34101, heretofore issued to respondent~~
16 Mohammad Moazzam Hossain, M.D.;

17 2. Revoking or suspending Physician Assistant
18 Supervisor License No. SA 14055, heretofore issued to respondent
19 Mohammad Moazzam Hossain, M.D.; and/or

20 3. Taking such other and further action as the Board
21 deems necessary and proper.

22 DATED: November 6, 1992

23
24 
25 KENNETH J. WAGSTAFF
26 Executive Director
27 Medical Board of California
Department of Consumer Affairs
State of California

Complainant